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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>	Docket Number (Optional)  <b>68144/P001US/10500783</b>	
	Application Number  09/843,621-Conf. #7677	Filed  April 26, 2001
	First Named Inventor  Jerry Prismantas	
	Art Unit  2616	Examiner  M. J. Moore

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached document.

Note: No more than five (5) pages may be provided.

I am the

applicant /inventor.

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

attorney or agent of record.

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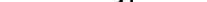
Telephone number

March 29, 2007

Date \_\_\_\_\_

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required. see below\*

This document is being electronically transmitted to the United States Patent & Trademark Office.

Date of Transmittal: March 29, 2007  
Signature:   
Carol A. Martin

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Patent Application of:  
Jerry Prismantas

Application No.: 09/843,621

Confirmation No.: 7677

Filed: April 26, 2001

Art Unit: 2616

For: SYSTEM AND METHOD FOR MITIGATING  
DATA FLOW CONTROL PROBLEMS IN THE  
PRESENCE OF CERTAIN INTERFERENCE  
PARAMETERS

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Examiner: M. J. Moore

**APPELLANT'S ARGUMENTS FOR  
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

MS AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**INTRODUCTORY COMMENTS**

Appellant hereby requests that a panel of Examiners formally review the legal and factual basis of the rejections of record prior to the filing of an Appeal Brief. This Request is filed concurrently with a Notice of Appeal.

**REMARKS****I. Issues**

Is the 35 U.S.C. § 102 rejection of record proper?

**II. Rejection under 35 U.S.C. § 102(e)**

In the Office Action mailed November 29, 2006 (hereinafter the “Final Action”), the Examiner rejected claims 1, 3-19, and 31 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 7,024,680 to Howard (hereinafter “Howard”). In the Office Action mailed on March 19, 2007 (hereinafter the “Advisory Action”), the Examiner maintained the rejection of record.

Claim 1 recites “wherein said scheduling means includes means for shifting a time sequence of said FRO data transfer to avoid said interference.” In the Advisory Action the Examiner points to Howard, at col. 13 lines 37-50, as satisfying this limitation. In doing so, the Examiner states that “Howard avoids interference by scheduling (shifting) a data transfer in a time interval without interference rather than in a time interval with interference (moving data transfer from one time interval to another time interval).” *See* Advisory Action, pg. 2. Appellant respectfully points out that the Examiner’s apparent understanding of both Howard and the pending claims is incorrect.

As an initial matter, Appellant notes that the Examiner has incorrectly equated “scheduling” with “shifting.” As understood by those skilled in the art, scheduling merely involves “setting an order and time for planned events.”<sup>1</sup> However, shifting involves “moving or changing direction or position.”<sup>2</sup> In view of such, Howard’s scheduling does not teach or suggest moving or changing anything; instead, Howard either sets an order and time for sending data or does not. Nevertheless, Appellant endeavors to further point out why the rejection of record should be withdrawn.

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<sup>1</sup> Webster’s Online Dictionary.

<sup>2</sup> Id.

Appellant notes that contrary to the Examiner's assertion, Howard does *not* shift a data transfer from a time of interference to a time of no interference. Instead, Howard observes periodic interference and then attempts to forecast when interference will occur in the future based on those observations. Using its forecast, Howard then plans, i.e., "schedules" data transmissions during forecasted periods of no interference. Likewise, Howard does not plan, i.e., "schedule" data transmission during forecasted periods of interference. However, in no event does Howard teach or suggest moving a data transmission from an original time to a subsequent time based on interference. As best Appellant understands, the Examiner interprets Howard as "re-scheduling" a data transmission based on interference. Appellant points out that Howard, at the Examiner's citation and throughout its disclosure, does not teach or suggest re-scheduling. Again, Howard merely plans to send data during forecasted periods of no interference and plans to not send data during periods forecasted periods of interference.

Further, according to claim 1, shifting a time sequence of RF data transfer to avoid interference occurs during RF data transfer intervals. That is, a time sequence of RF data transfer is shifted within a RF data transfer interval in which interference occurs. Such embodiments are shown at, for example, Figs. 3 & 4. As such, even if Howard could be construed as shifting a data transfer, Howard would presumably schedule the entire data transfer around interference such that its start time would be arranged after the expected interference. In no event does Howard suggest shifting RF data transmissions during the actual transfer intervals. Appellant notes that Howard is silent as to shifting an RF data transfer sequence during the RF data transfer interval, as set forth in claim 1. in order for a prior art reference to be anticipatory under 35 U.S.C. § 102, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." *See M.P.E.P. § 2131; citing Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989). As such, Howard does not teach or suggest every limitation of claim 1. Therefore, Appellant requests withdrawal of the rejection of record.

Claims 3-11 and 31 depend from claim 1 and inherit every limitation therefrom. As shown, Howard does not teach every limitation of claim 1. As such, claims 3-11 and 31 set forth limitations not taught by Howard. Moreover, claims 3-11 and 31 set forth limitations making them patentable in their own right.

### **III. Conclusion**

Appellant respectfully traverses the rejections of record and requests reconsideration and withdrawal of such in view of the remarks contained herein. The fees required under 37 C.F.R. § 41.20(b)(2) are dealt with in the accompanying transmittal. If any additional fee is due, please charge Deposit Account No. 06-2380, under Order No. 68144/P001US/10500783 from which the undersigned is authorized to draw.

Dated: March 29, 2007

Respectfully submitted,

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Date of Transmission: March 29, 2007

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